No. 87

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD A. RUMELY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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cannot be conducive to well considered legislation. [Emphasis supplied.]

Under these circumstances, we submit, there can be no question that when Section 307(b) of the Lobbying Act (2 U.S.C. 266(b)) provided that the report requirements were applicable to any person receiving money "to influence, directly or indirectly," federal legislation, Congress intended the Act to apply to pressure organizations, and that when, four years after the enactment of the Lobbying Act, the House of Representatives authorized the Select Committee to investigate lobbying, it intended to have that committee study the methods of, and the effects of the lobbying act upon, "professionally inspired efforts to put pressure upon Congress," directly or indirectly. To hold that Congress is without power to conduct such an inquiry is to hold that Congress cannot inquire into the fundamental working of the democratic process.

It is unnecessary in this case to consider to what extent Congress may validly legislate in relation to organized efforts to influence public opinion on federal matters. It is sufficient to point out that the majority opinion below is clearly erroneous in assuming that there cannot possibly be any valid legislation in this field.[4] As the dissenting opinion

[4] The United States District Court for the District of Columbia recently held certain sections of the Lobbying Act unconstitutional for indefiniteness (*National Association of Manufacturers* v. *McGrath*, 103 F. Supp. 510). This holding,

points out (R. 216, n. 24), the principle of disclosure is one embodied in our law in many forms, and one which has been consistently upheld. E.g., the disclosure provisions of the Federal Corrupt Practices Act (now 2 U.S.C. 241-256) were upheld in *Burroughs and Cannon* v. *United States*, 290 U.S. 534; the conditioning of second class mailing privileges on disclosure of ownership and the marking of advertisements as such was upheld in *Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288. While this Court found it unnecessary to pass upon the constitutionality of the Foreign Agents Registration Act (22 U.S.C. 611, *et seq.*) in the case of *Viereck* v. *United States*, 318 U.S. 236, because it held the activities there involved not within the purview of the statute, the constitutional basis of the statute's disclosure requirements were expressed in the dissenting opinion of Mr. Justice Black, at p. 251, as follows:

> * * * Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes

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even if sustained on appeal, obviously does not negate Congressional power to legislate with respect to lobbying. The fact that the particular act was held deficient does not mean that Congress cannot enact a constitutional statute on the same subject. Indeed, the case might be cited to illustrate the need of continued Congressional inquiry as a basis for drafting a more definite law.

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 801

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD A. RUMELY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia reversing respondent's conviction for wilful refusal to supply records and give testimony to a duly authorized committee of Congress.

OPINIONS BELOW

The opinions in the Court of Appeals (R. 93-224) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered April 29, 1952 (R. 224-225). The jurisdic-

tion of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether Congress had power to authorize inquiry into organized efforts to influence public opinion in regard to federal legislation and whether the Select Committee on Lobbying Activities was authorized to do so.

2. Whether information sought by the Select Committee, as to names of those who gave sums of over $500 to the Committee for Constitutional Government, Inc., an organization registered under the Lobbying Act, for the purchase or distribution of books of that organization, was pertinent to the inquiry.

STATUTES INVOLVED

R. S. 102, as amended, 52 Stat. 942, 2 U.S.C. 192, provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, * * * or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

STATEMENT

Respondent was convicted on counts one, six, and seven of an indictment charging wilful refusal to produce records and give testimony before the Select Committee on Lobbying Activities of the House of Representatives, in violation of 2 U.S.C. 192 (R. 2-4, 181). The Committee had been created by resolution (H. Res. 298, 81st Cong., 1st sess., Gov. Ex. 2, R. 18), authorizing it to conduct a study and investigation, *inter alia*, of "all lobbying activities intended to influence, encourage, promote or retard legislation." Count one charged that respondent wilfully refused to produce records, duly subpoenaed, of the Committee for Constitutional Government, Inc., showing the name and address of each person from whom a total of $1,000 or more had been received by the Committee from January 1, 1947, to May 1, 1950, for any purpose, including receipts from the sale of books and pamphlets. Count six charged a similar offense as to a subpoena calling for the names and addresses of those from whom the Committee on Constitutional Government had received $500 or more, and count seven charged wilful refusal to give the name of a woman from Toledo who gave $2,000 for distribution of a book called *The Road Ahead*. (R. 2-4.)

The background of the subpoenas and of the question asked respondent is set forth in full in a report of the Select Committee. (H. Rep. 3024,

81st Cong., 2d sess.). This report was certified to the United States Attorney for the District of Columbia pursuant to a resolution of the House of Representatives in accordance with the provisions of Section 104 of the Revised Statutes as amended, 2 U. S. C. 194; Govt. Ex. 4, R. 19.

According to that report, the Committee for Constitutional Government, Inc., and respondent, its executive secretary, have been registered as lobbyists since October 7, 1946,[1] and the Committee reported spending approximately $2,000,000. One of the chief functions of the Committee was the distribution of books and pamphlets presenting one side of national legislative issues (Rep. p. 1). The report states (p. 2):

> The distribution of printed material to influence legislation indirectly * * * is the basic function of the Committee for Constitutional Government.

After enactment of the Lobbying Act, the Committee for Constitutional Government adopted a policy of accepting payments of over $490 only if the contributor specified that the funds be used for the distribution of one or more of the committee's books and pamphlets. It then applied the term "sale" to such receipts and did not report them as

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[1] This registration, pursuant to the Federal Regulation of Lobbying Act (60 Stat. 839, 2 U.S.C. 261-270) was independently proved at the trial (R. 14-17). Respondent showed that his registration was under protest (Defendant's Exhibits 1-6, R. 124-130).

contributions under the Lobbying Act[2] (Rep. pp. 1-2).

The report also shows that, when respondent appeared, pursuant to the subpoenas referred to in the indictment, he repeatedly stated that, while he would give the total income received from the sale of books, and records of loans except those used for the promotion of two books (Rep. pp. 7, 8, 10, 16), he would not supply information as to the identity of purchasers of books and pamphlets (Rep. pp. 7, 8, 9, 10, 12, 14, 15, 16, 17). He maintained that none of the books or pamphlets of the Committee for Constitutional Government dealt with specific legislation (Rep. pp. 9-10, 14), although he admitted that, when the Taft-Hartley Act was under discussion, it published and distributed a book called "Labor Monopolies or Freedom," of which all members of Congress received a copy (Rep. p. 11). He testified that about 90 per cent of the purchasers shipped the books themselves but testified that others designated types of individuals, such as "farm leaders" as recipients (Rep. p. 12). He gave as an example the case of one donor who paid to send to 15,550 libraries a book called *Compulsory Medical Care.* He said he was holding back distribution while he was "looking around now for another donor to send a copy to 15,000 editors, because we wish that book to hit the editors on the same day that the library gets it, because the edi-

[2] The Lobbying Act requires disclosure of contributions of $500 or more. Section 305, 2 U.S.C. 264.

tor may be moved to say something about it, and build up interest in it.'" (Rep. pp. 12-13.) He testified that a woman from Toledo gave him $2,000 for distribution of a book called *The Road Ahead*, but he refused to furnish her name (Rep. p. 12).[3]

The Report states (pp. 2-3)—

> Because of the refusal of the Committee for Constitutional Government, Inc., to produce pertinent financial records, this committee was unable to determine whether or not the Committee for Constitutional Government, Inc., is evading or violating the letter or the spirit of the Federal Regulation of Lobbying Act by the establishment of class or contributions called "Receipts from the sale of books and literature," or whether they are complying with a law which requires amendments to strengthen it.
>
> The policy of the Committee for Constitutional Government, Inc., of refusing to accept contributions of more than $490 unless earmarked for books, etc., may also involve: (1) Dividing large contributions into installments of $490 or less, and causing the records of the Committee for Constitutional Government to reflect receipt of each installment on a different date, and/or causing the records of the Committee for Constitutional Government to give credit; for the several installments, to various relatives and associates of the actual contributor. (2) Causing the Committee for Constitutional Government's records as to

[3] This refusal forms the basis of count 7.

"Contributions" to reflect less than the total amount of contributions actually received, by labeling some part of such funds as payments made for printed matter.

Because of the refusal of the Committee for Constitutional Government, Inc., to produce pertinent financial records, this committee was unable to determine whether or not the Federal Regulation of Lobbying Act requires amendment to prevent division of large contributions into installments, or to prevent the crediting of contributions to others than the real contributor, or to prevent the use of other subterfuges.

The trial court ruled as a matter of law that the Select Committee was a validly constituted committee of Congress, and that the records and information requested, as alleged in the counts of the indictment under consideration, were pertinent to the inquiry (R. 175). It submitted the issue of wilful refusal to the jury (R. 176-178). Upon respondent's conviction, he was sentenced to pay a fine of $1,000 and to imprisonment for six months, with execution of the prison sentence suspended and respondent placed on probation (R. 10).

On appeal the judgment of conviction was reversed. (R. 224-225), by a divided court, on the ground that the Select Committee had no authority to compel production of the information which respondent refused to furnish. The majority of the court below ruled that Congress "has no power in respect to efforts to influence public opinion" (R.

202), and hence that the term "lobbying activities," as used in the House Resolution creating the Select Committee, must be held to mean lobbying in the sense of direct contact with Congressmen, and "did not purport to convey power to investigate efforts to influence public opinion" (R. 205). Accordingly, the majority ruled (R. 205)—

> We are of the opinion that the demand made upon appellant for the names of purchasers of books from his concern was outside the terms of the authority of the Buchanan Committee, since the public sale of books and documents is not "lobbying."

The majority also held that there was no issue in the case as to whether the information was sought to ascertain possible subterfuges to evade the Lobbying Act, because no consideration was given to other financial records admittedly produced by respondent. It thought such other data would have to be considered in determining whether the names of purchasers would be relevant on the issue of subterfuge (R. 199-200).

The dissenting judge was of the view that both the report citing respondent and the fuller hearings before the committee established the pertinency of the information sought (R. 210-215). He rejected the basic premise of the majority opinion that indirect lobbying was not within the scope of the Select Committee, pointing out that any "concept of 'lobbying activities' which ignores

the realism of the day is an archaic one" (R. 217). The dissenting opinion states (R. 218):

> Congress, through the Buchanan Committee, was concerned with a perennial problem in our democracy—how to deal with highly organized pressure groups, and the distortions and evils they sometimes bring in their wake, and how to distinguish such groups from individual citizens petitioning their representatives. Neither direct nor indirect lobbying is an evil and a danger, but either can become so, if plainly or subtly dishonest methods are used to distort the legislative function. * * * I reject the notion that because Congress may not constitutionally *prohibit* indirect lobbying activities, it is without power to provide any measure of protection for itself and the public from its abuse. And here, since the Buchanan Committee had strong reason to believe that the abuse had already arisen, the attending circumstances were clearly pertinent to its inquiry. * * *

REASONS FOR GRANTING THE WRIT

1. The basic premise of the majority opinion below is that Congress is without constitutional power even to inquire into organized efforts to influence public opinion for or against legislation. The opinion makes it clear that the narrower holding, that Congress did not authorize such inquiry, is based on the broader assumption that grant of such power would have been unconstitutional. The case thus involves a fundamental issue as to the power of

Congress to inquire into one of the most important elements in the democratic processes, the moulding of public opinion. The decision below, in preventing inquiry into such matters, unduly limits the power of Congress to deal with the problem of how to keep truly free the very right upon which the decision below purports to rest, the right to freedom of expression.

As the dissenting opinion points out, the problem of reconciling freedom of expression with the existence of highly organized, heavily financed pressure groups, employing newly developed techniques of public relations, has been a matter of congressional and executive concern, at least since 1913. (See H. Rep. 113, 63d Cong., 2d sess., p. 5.) In the 1920's, the extensive campaign of the electric power industry against government regulation was, at the request of the Senate, investigated by the Federal Trade Commission (S. Doc. 92, pt. 71A, 70th Cong., 1st sess., p. 18). In 1935 the Senate directed an "investigation of all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly" in connection with the Public Utility Holding Company Act (S. Res. 165 and 184, 74th Cong., 1st sess.). In 1938, the Civil Liberties Committee of the Senate Committee on Education and Labor, in the course of its investigation in the labor field, had occasion to consider the propaganda efforts of organized employer groups (S. Rep. 6, pt. 6, 76th

Cong., 1st sess., pp. 218-219). The Temporary National Economic Committee, established in 1938, published in 1941 its monograph No. 26, entitled, "Economic Power and Political Pressures" which dealt with the problem of lobbying and propaganda techniques, and recommended disclosure of sources of funds and expenditures for public relation services, advertising, radio, etc. (p. 194). The Report of the President's Committee on Civil Rights (1947), pp. 52-53, recommended that the Government "provide a source of reference" for "accurate information" as to "those who are active in the market place of public opinion."

The crux of the problem was stated in the report of the Joint Committee on the Organization of Congress which proposed the Federal Lobbying Act (S. Rep. 1011, 79th Cong., 2d sess., p. 26), as follows:

> We fully recognize the right of any citizen to petition the Government for the redress of grievances or freely to express opinions to individual Members or to committees on legislation and on current political issues. However, *mass means of communication and the art of public relations have so increased the pressures upon Congress as to distort and confuse the normal expressions of public opinion.*
>
> A pure and representative expression of public sentiment is welcome and helpful in considering legislation, but *professionally inspired efforts to put pressure upon Congress*

from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment. * * *

Thus Congress may, if it deems such a course ecessary to preserve the integrity of free expres- ion, require some disclosure, not only by those rganizations like the Committee for Constitu- ional Government, which receive money for the urpose of influencing federal legislation, but also y other organizations, such as the alleged purchas- rs of the Committee's books, which themselves istribute literature designed to influence public pinion regarding federal legislation. It is pos- ible, for example, that anonymous distribution ould be prohibited. It is possible that corpora- ions spending corporate funds for such purpose ould be required to report such fact to their stock- olders, or to Congress.

It is unnecessary to speculate further since no ctual legislation is here involved. It is sufficient hat the subject matter under investigation by the elect Committee was clearly a matter significant o the public welfare into which Congress could gitimately inquire. The doctrine of *Kilbourn Thompson,* 103 U.S. 168, that Congress may not nquire into private affairs, thus has no applica- on here. *McGrain v. Daugherty,* 273 U.S. 135, 77-179. Congress could properly inquire broadly nto organized efforts to influence public opinion n federal legislation.

Since, as noted above, the conclusion that the Select Committee was not authorized to investigate lobbying through organized efforts to influence public opinion was based on the theory that such an interpretation of the resolution would raise constitutional issues, the conclusion as to the powers of the Committee falls with its premise. The majority opinion below admits that there is some justification for the argument that the words "lobbying activities" in the resolution were intended to encompass the full scope of the Lobbying Act, and admits that, in terms, the act applies to those who receive money "to influence, directly or indirectly" federal legislation. Section 307(b); 2 U.S.C. 266 (b). We think it is clear, both from the language and the legislative history set forth above, that Congress meant by this language to cover organized professional attempts to influence public opinion and, as we have shown, that Congress had constitutional power to do so. Hence, the resolution authorizing inquiry by the Select Committee had at least the same scope.

2. If organized efforts to influence public opinion on federal legislation were a proper subject of investigation by the Select Committee, then, as the majority opinion below itself tacitly assumes, there can be no doubt that the information which petitioner refused to furnish was pertinent to the inquiry, irrespective of any issue as to possible subterfuges under the Lobbying Act. The Committee was seeking only the names of so-called

"purchasers" who were buying in large quantities for distribution to others. The alleged purchasers were thus persons who were themselves entering the market for public opinion. Congress had a right to know who such people were and to learn in what manner they were conducting their activities.

No question of the First Amendment is involved. As the Court of Appeals for the Second Circuit said with respect to a challenge to the authority of a congressional committee to investigate subversive activities, in *United States* v. *Josephson,* 165 F. 2d 82, 91, certiorari denied, 333 U.S. 838:

> The power of Congress to gather facts of the most intense public concern * * * is not diminished by the unchallenged right of individuals to speak their minds within lawful limits.

The investigation here involved restrains no one from speaking, writing or publishing his views in any manner. The inquiry does not extend to private views as such. The inquiry goes only to those who have taken action to disseminate their views to others, and merely seeks to obtain information about the manner in which such action is taken. We submit, therefore, that the disclosure called for by the Committee in no way impinges on the First Amendment rights, either of the Committee for Constitutional Government, or of the quantity purchasers of its books.

As noted above, the principle that those who seek to capture a market, whether for their wares or their opinions, may be compelled to disclose to the public the fact of such interest, is a long-standing concept which is in aid of, and not a detriment to, the rights protected by the First Amendment. The underlying theory of democratic government in that it is for the people to judge the measures they deem necessary for their welfare. In forming their judgment, the people are entitled to know the interest of those who seek to convince them. As the dissenting judge below stated (R. 224):

> If legislation requiring financial disclosure is free from objection on First Amendment grounds, compulsion of these disclosures by legislative inquiry is likewise free from the same objection.

In addition, as the dissenting opinion below also points out, the questions which respondent refused to answer were pertinent to the Select Committee's inquiry because the Committee had reason to believe that the Lobbying Act was being evaded by the device of having contributions made in the form of purchases. When the pattern of accepting payments of more than $490 only in the form of purchases of books is judged in the light of the requirement of the Federal Lobbying Act for reports on contributions of more than $500, it is evident that the scheme was one to avoid the disclosure requirements of that act. Certainly Congress had

a right to inquire into any possible loopholes in its recently enacted legislation. See *Sinclair* v. *United States,* 279 U.S. 263, 297-298.

We submit the majority below was in error in holding that the pertinency of questions as to the identity of alleged purchasers to the issue of evasion could not be judged without consideration of the other financial data which respondent did produce. We think it is evident on its face that the alleged purchases were necessarily a method of supporting the committee. The chairman of the Select Committee stated that the total amount of loans and contributions in the data furnished the Select Committee aggregated only about $25,000 in contrast to evidence that the activities of the Committee for Constitutional Government exceeded $1,000,000 a year (Rep. p. 16).

Under these circumstances, there was ample basis for the Select Committee's conclusion that a statement of the amounts received for the sale of books would not be adequate to enable it to judge if contributions were being accurately reported; that it needed the names to determine whether large contributions were being divided into installments or whether alleged purchases were in reality camouflaged contributions. The court below was not warranted in overruling the committee's judgment as to the information it needed to study the practical working out of the recent lobbying legislation.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

MAY 1952.

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